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# ADR in Youth and Intercollegiate Athletics

*Gil Fried & Michael Hiller\**

## I. INTRODUCTION

In 1967, when several black athletes at the University of Texas El Paso (UTEP) felt that the UTEP athletic department did not make any extra effort to accommodate black athletes, they decided to take matters into their own hands.<sup>1</sup> Early in the 1967 football season, black football players staged a sit-in at the athletic dorm, engaging in what was possibly the first major college football boycott.<sup>2</sup> The athletes' demands included: being allowed to date whomever they wanted, increasing the number of black females in the student body, providing the black athletes' wives with the same job opportunities as the white players' wives, and discontinuing the coach's poor treatment of black athletes, which included derogatory racial jokes.<sup>3</sup> At the football coach's request, the athletes agreed not to discuss the matter with the media.<sup>4</sup> However, the sit-in did not change either university policy or the coach's behavior. As one athlete stated, "not a single thing happened."<sup>5</sup>

UTEP's problems were not limited to the football team. After the assassination of Dr. Martin Luther King, black members of the track team approached their coach and expressed their desire not to compete against Brigham Young University (BYU) in an upcoming meet.<sup>6</sup> When the coach disregarded the athletes'

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1. See Jack Olsen, *Part 3: The Black Athlete, In An Alien World*, SPORTS ILLUSTRATED, July 15, 1968, at 28, 30-32.

2. See *id.* at 36.

3. See *id.*

4. See *id.*

5. *Id.*

6. See *id.* at 41-42. The athletes did not want to compete against BYU because it is affiliated with the Church of Jesus Christ of Latter-day Saints (Mormons), and the athletes felt that the Mormons were prejudiced against blacks.

BYU was the center of another protest several years later involving several black members of the University of Wyoming football team who were removed from the team

complaint, the athletes boycotted the meet. The athletes were kicked off the team and their scholarships were revoked.<sup>7</sup> Not only did UTEP lose all hope of winning a National Collegiate Athletic Association (NCAA) championship and the respect of black athletes, but UTEP also faced a major publicity problem when Bob Beamon, an expelled athlete, set a world record several months later at the Mexico City Olympic Games.<sup>8</sup> The publicity surrounding the events at UTEP triggered a chain reaction throughout intercollegiate sports.<sup>9</sup> Within a year, black athletes on thirty-five college campuses stunned coaches and administrators with sweeping demands for change.<sup>10</sup>

Racial conflicts represent just one of many student-athlete concerns. While racial conflicts in athletics have subsided since the tumultuous 1960s, other disputes can still develop into explosive conflicts affecting more than just the participants on the athletic field.<sup>11</sup> Nonracially motivated problems have brought

for planning to protest the perceived Mormon view by wearing black armbands during a game. *See generally* Williams v. Eaton, 468 F.2d 1079 (10th Cir. 1972).

7. *See* Olsen, *supra* note 1, at 42.

8. *See id.*

9. Intercollegiate sports were not the only arena for black athletic protest in this era. The 1968 Olympics and United States Olympic Trials were marred by boycotts and proposed boycotts. One of the athletes who boycotted the Olympics was basketball player Lew Alcindor, who, several years later, changed his name to Kareem Abdul-Jabbar. *See* Pete Axthelm, *The Angry Black Athlete*, NEWSWEEK, July 15, 1968, at 56.

10. *See id.* Some programs were able to survive this period of turmoil. At the University of California, Los Angeles (UCLA), basketball coach John Wooden maintained peace by allowing black athletes to openly express their concerns. *See id.* However, other programs were less successful in avoiding racial conflicts. At the University of California, Berkeley (Berkeley), basketball coach Rene Herrerias ordered a black player to alter his haircut. When the athlete refused, "other black athletes rallied behind him and presented the university with a list of demands, including the hiring of black coaches." *Id.* at 58. An advisory committee studied the matter, which led to the resignations of Herrerias and the athletic director and the hiring of a black assistant coach. *See id.* Encouraged by these results, black football players at Berkeley walked out until their demands were also met. *See id.* Other racial conflicts and boycotts occurred at Iowa State University and Michigan State University, which led to the planning of a Black Athletic Power Conference involving participants from throughout the Big Ten. *See id.* at 58-59.

11. Before the 1989 football season, Conway High School's white coach replaced his former black quarterback with a new white quarterback. *See* Hank Hersch, *Choosing Sides*, SPORTS ILLUSTRATED, Nov. 27, 1989, at 42. Such a position switch is common in football and a coach normally has broad authority to make such decisions. However, this was not a typical switch because Conway's black citizens took to the streets in protest. Thirty-one of thirty-seven black players decided to boycott the team for the season. *See id.*

The Conway boycott served as a rallying point for the black community, which felt it was underpaid and unempowered. *See id.* at 43. The resulting tension produced

several athletic programs to their knees. "[T]he wave of the future . . . [seems to be] an increased militancy and willingness among athletes to speak out and act on the abuse of amateurism, even to the point of taking their coaches and schools to court."<sup>12</sup>

For example, in February 1989, the football team at Prairie View A & M University (Texas) went on strike demanding that the administration fire the head coach because they felt he was neglecting their education.<sup>13</sup> The students pursued their grievances through the university's chain of command, but no action was taken.<sup>14</sup> When the strike lasted more than a month, university officials began to fear that the strike had tarnished the university's image.<sup>15</sup> Similar occurrences are cropping up on a regular basis as athletes fight for their rights, or attempt to advance their own agendas in youth and intercollegiate athletics.<sup>16</sup>

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fistfights, graffiti, name-calling and went as far as death threats. *See id.* As one black faculty member at Conway stated, "the initial problem should have never gone past the principal's office." *Id.* at 63.

Conway's fiasco recurred in 1995 when the replacement of a black quarterback with a white quarterback by San Angelo Central's head coach was brought to the School Board's attention by the National Association for the Advancement of Colored People (NAACP). *See Quarterback Controversy*, FROM THE GYM TO THE JURY, No. 2, 1995, at 12.

12. Clark Norton, *No Time For Classes*, CAL. LAW., July 1984, at 45, 46.

13. *See* Paul Weingarten, *Team Refuses to Be Tackling Dummies*, CHI. TRIB., Mar. 5, 1989, at 5.

14. *See id.*

15. *See id.*

16. *See generally* Denis J. O'Connell High Sch. v. Virginia High Sch., 581 F.2d 81 (4th Cir. 1978) (involving a private high school's petition to participate in the Virginia High School League-sponsored championship athletic contests); Williams v. Hamilton, 497 F. Supp. 641 (D.N.H. 1980) (involving a constitutional challenge to the eligibility rules for a transferring college soccer player); Samara v. National Collegiate Athletic Ass'n, 1973-1 Trade Cas. (CCH) ¶ 74,536 (E.D. Va. May 1, 1973) (involving a challenge to the NCAA's track and field eligibility requirements); Thompson v. Barnes, 200 N.W.2d 921 (Minn. 1972) (involving a high-school athlete's violation of the high school league's alcohol rule); Santee v. Amateur Athletic Union of the United States, 153 N.Y.S.2d 465 (N.Y. Sup. Ct. 1956) (involving an action to restrain the Amateur Athletic Union from suspension of an athlete from participation in track and field events).

Several national publications have highlighted disputes affecting youth sports including the cancellation of an Illinois high school wrestling championship by the Illinois High School Association after it lost a court battle. *See* Alexander Wolff & Christian Stone, eds., *Illegal Hold*, SPORTS ILLUSTRATED, March 6, 1995, at 19; *see also* Gary Mihoces, *Lawyers Join the Lineup, Lawsuits Overshadow Youth League Playoffs*, USA TODAY, Aug. 17, 1995, at C3; Carolyn White, *Little League Not Shy About Defending Turf*, USA TODAY, Aug. 17, 1995, at C3.



While time might heal many wounds, there is no guarantee it will ever restore an organization's revenue or good reputation. To help resolve potential conflicts, a university<sup>17</sup> could establish various provisions that require using alternative dispute resolution (ADR) techniques to resolve athletic conflicts. For example, using ADR techniques would potentially minimize the risk of player boycotts. Contracts are a necessary ingredient to move all parties toward alternative dispute resolution. Contractual provisions in intercollegiate sports include intercollegiate letters of intent and athletic scholarships.<sup>18</sup> Additionally, student codes of conduct (codes or codes of conduct) represent the creation of a contractual relationship between the university and its students.<sup>19</sup>

Currently, three organizations provide ADR assistance for sports-related disputes. The American Arbitration Association (AAA) and the Court of Arbitration of Sports provide assistance for resolving Olympic disputes and disputes involving national amateur sports-governing bodies.<sup>20</sup> The recently established Athletic Dispute Resolution Service (ADRS), was created to resolve youth sports issues and disputes.<sup>21</sup> One unique feature of ADRS involves a twenty-four-hour arbitration process to resolve eligibility disputes which normally result in restraining orders that hold up or prevent athletic competitions.<sup>22</sup>

While sports disputes can be resolved utilizing mediation, arbitration, or med-arb,<sup>23</sup> little effort has been made to apply these principles to disputes in youth leagues or intercollegiate athletics. Based on limited industry coverage, this article dis-

17. For simplicity, this Article will refer only to university programs. All references to universities will also apply to youth sports associations such as Little League Baseball and Pop-Warner Football, as well as to high school athletics.

18. See generally *infra* Part III.A.1-2.

19. See generally *infra* Part III.A.3.

20. See AMERICAN ARBITRATION ASSOCIATION, USING ALTERNATIVE DISPUTE RESOLUTION TO SETTLE SPORTS DISPUTES 4-5 (1995) [hereinafter AAA]; see also Jill Pilgrim, *The Competition Behind the Scenes at the Atlanta Centennial Olympic Games*, ENT. & SPORTS LAW., Winter 1997, at 1, 21; Stephan Netze, *The Court of Arbitration for Sport: An Alternative for Dispute Resolution in U.S. Sports*, ENT. & SPORTS LAW., Spring 1992, at 1.

21. See *Dispute Resolution Will Save You Money*, SPORTS FACILITIES L. REP., July-Aug. 1996, at 1 (on file with author).

22. See *id.*

23. Med-arb, short for mediation-arbitration, is a process first utilizing mediation to resolve some aspects of a dispute and proceeding to arbitration to resolve the remaining issues. See discussion *infra* Part II.C.

cusses the development of an ADR system to resolve athletic disputes in the most expedient and inexpensive manner possible. In order to help resolve potential disputes, the most critical components of these techniques should be synthesized into a meaningful ADR program through athletic contracts. ADR programs can be effectively implemented through specific provisions in the various contracts solidifying the university and student relationship.

## II. ADR PRINCIPLES

While numerous ADR options are available for resolving disputes,<sup>24</sup> mediation, arbitration and med-arb are the three most common ADR tools. The general goal of ADR is not only to determine who is right or wrong—such as with litigation—but also to “produce a more durable solution by restoring, preserving, or enhancing the parties’ relationship.”<sup>25</sup> The benefits of using these options—mediation, arbitration, or med-arb—will be discussed in relation to resolving sports-related disputes.

### A. Mediation

Mediation is third-party assisted negotiation.<sup>26</sup> In mediation, the mediator takes parties who often vehemently disagree, and attempts to lead them to common ground.<sup>27</sup> The mediator, who is often thought of as a neutral party, is really a “participant-observer” who is actively engaged with all parties.<sup>28</sup> He or she will dive into the middle of the conflict and help the parties negotiate their own settlement.<sup>29</sup> Unlike arbitrators, judges, or juries, me-

24. See Tom Arnold, *Why ADR*, in *ALTERNATIVE DISPUTE RESOLUTION: HOW TO USE IT TO YOUR ADVANTAGE!*, 13, 18-19 (ALI-ABA Course of Study, Dec. 12, 1996), available in Westlaw, SB41 ALI-ABA 13; see also Tom Arnold, *A Vocabulary of Alternative Resolution Procedures*, in *ALTERNATIVE DISPUTE RESOLUTION: HOW TO USE IT TO YOUR ADVANTAGE!*, 47 (ALI-ABA Course of Study, Dec. 12, 1996), available in Westlaw, SB41 ALI-ABA 47 (identifying 24 ADR variations) [hereinafter *A Vocabulary*].

25. Kathleen A. Devine, Note, *Alternative Dispute Resolution: Policies, Participation and Proposals*, 11 *REV. LITIG.* 83, 89 (1991), cited in Shalu Tandon Buckley, Note, *Practical Concerns Regarding the Arbitration of Statutory Employment Claims: Questions that Remain Unanswered After Gilmer and Some Suggested Answers*, 11 *OHIO ST. J. ON DISP. RESOL.* 149, 162 n.99 (1996).

26. See Howard J. Aibel, *Mediation Works*, *DISP. RESOL. J.*, Jan. 1997, at 25; see also AAA, *supra* note 20, at 11.

27. See JOHN M. HAYNES & GRETCHEN L. HAYNES, *MEDIATING DIVORCE* 1 (1989).

28. See ROBERT D. BENJAMIN, *THE MEDIATION OF BUSINESS, FAMILY AND DIVORCE CONFLICTS* § 1.01, at 1 (1990); see also Arnold, *Why ADR*, *supra* note 24, at 32.

29. See Aibel, *supra* note 26, at 25; see also Robin N. Amadei & Lillian S.

diators will not make decisions for the parties. Rather, mediators help the parties create options for resolution without imposing a solution.<sup>30</sup> The parties have full control over the process.<sup>31</sup> In this regard, mediation differs greatly from arbitration in the time required, formalities (such as following specific discovery rules or evidentiary requirements), cost, and traps for the unwary or inexperienced.<sup>32</sup>

The major benefits inherent in the mediation process include expediting resolution time, de-escalating conflict, utilizing an informal process, focusing parties away from personal positions and toward the legal issues, identifying numerous potential solutions, and producing a final agreement that can be structured as a contract.<sup>33</sup>

In addition to these benefits, confidentiality is a major reason for using mediation. For example, if a university is embroiled in a racial dispute, publicizing the dispute might help the students, but could significantly harm the university. Mediation would allow the disputing parties to resolve the conflict privately and without public scrutiny. Even though some might feel that the issue should be publicized in order to garner public support, the previously mentioned disputes<sup>34</sup> would seem to indicate that public disclosure usually leads the parties to harden their positions. Mediation allows the parties to discuss the various issues in a nonintrusive manner, facilitating further communication and disclosure between parties.

Further, mediation, like other ADR techniques, also presents a significant opportunity to avoid creating precedent. Whereas any judicial decision has the potential for becoming precedent for any further action or the resolution of similar disputes, ADR allows institutions to avoid creating precedent, thereby allowing more flexibility in interpreting and applying rules and regulations in future cases. Disputing parties who must work together

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Lehrburger, *The World of Mediation: A Spectrum of Styles*, DISP. RESOL. J., Oct. 1996, at 62, 62-63; AAA, *supra* note 20, at 11.

30. See Arnold, *Why ADR*, *supra* note 24, at 32; see also AAA, *supra* note 20, at 11; Aibel, *supra* note 26, at 25-26.

31. See Arnold, *Why ADR*, *supra* note 24, at 32.

32. See Arnold, *A Vocabulary*, *supra* note 24, at 51-52.

33. See generally ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, SOURCEBOOK: FEDERAL AGENCY USE OF ALTERNATIVE MEANS OF DISPUTE RESOLUTION 187 (1987) [hereinafter SOURCEBOOK].

34. See *supra* Part I.



after a resolution can utilize mediation to resolve the dispute while simultaneously preserving the parties' relationship.

Mediation can be divided into two broad categories: court-annexed mediation and private mediation. Court-annexed mediation occurs when a court refers a case to mediation once litigation has begun. Courts often turn to mediation when it appears that mediation is a feasible alternative<sup>35</sup> or to save judicial time and money. Private mediation occurs when the parties themselves proceed to a mediator before litigation begins. In private mediation, while lawyers are often used for advice between sessions, they are often not present at the session.<sup>36</sup>

Both private and court-annexed mediation can be further divided into two types of processes: caucus and conference. In caucus mediation, the parties are placed in separate rooms during most of the mediation, and the mediator meets individually and jointly with the parties.<sup>37</sup> In conference mediation, the parties remain in the same room throughout most of the mediation.<sup>38</sup> Most mediation involves a combination of caucus and conference processes.<sup>39</sup>

Mediation is widely used throughout the country.<sup>40</sup> While family and divorce disputes have utilized mediation the most, mediation is being used to resolve numerous other disputes, including international conflicts<sup>41</sup> and disputes among attorneys in the same law firm.<sup>42</sup>

In the sports context, private mediation has been used more frequently than court-annexed mediation. In fact, there are few, if any, cases documented concerning court-annexed mediation in sports.<sup>43</sup> Mediation is essential for continuing the generally posi-

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35. Mediation is especially useful in avoiding conflict in family law cases, speeding up resolution of cases in courts with lengthy dockets and maintaining a continued strong working relationship among the disputing parties.

36. See CHRISTOPHER W. MOORE, *THE MEDIATION PROCESS* 108 (1986).

37. See *id.* at 262-71; see also; AAA, *supra* note 20, at 11; Aibel, *supra* note 26, at 28.

38. See MOORE, *supra* note 36, at 262-71.

39. See *id.*

40. See Rita Henley Jensen, *Divorce—Mediation Style*, A.B.A. J., Feb. 1997, at 56, 56.

41. See Jay Rothman, *Reflexive Dialogue as Transformation*, 13 *MEDIATION Q.* 345, 348-49 (1996).

42. See Jill Schachner Chanen, *Talking It Through*, A.B.A. J., Feb. 1997, at 64, 66.

43. Arbitration has been used in cases in which courts were forced to send the dispute to the American Arbitration Association pursuant to the Amateur Sports Act



tive working relationship necessary in athletics. The impact of a court battle can be so severe that the parties may be unable to continue a working relationship. Mediation has proven effective in preserving good relations between disputing parties because mediation allows the parties to separate the "person" from the "issue."

### B. Arbitration

Arbitration involves a third-party individual or panel that hears evidence from all parties and makes a final adjudication of the dispute.<sup>44</sup> Evidentiary rules in a particular matter can be relaxed, thereby allowing greater freedom and flexibility for the arbitrator. This allows the arbitrator to decide matters utilizing equitable concepts that might otherwise be unavailable in the courts. Arbitration can be binding or nonbinding, with binding arbitration precluding any challenge to the decision in court, unless the arbitrator abused their discretion.<sup>45</sup> Whether an arbitration will be binding or nonbinding is determined at the outset of the arbitration process in the contractual agreement.<sup>46</sup> Parties can enter into the arbitration contract before or after the dispute arises.

If there is an applicable, binding arbitration clause, arbitration will be the exclusive means for resolving the conflict. Courts rarely reverse an arbitration decision if the arbitrator acts in good faith and limits the decision to issues specifically addressed by the underlying contract.<sup>47</sup> A contract's arbitration clause can

of 1978, 36 U.S.C. §§ 371-96 (1994). See generally AAA, *supra* note 20. However, an athlete has waived arbitration in at least one case. See *Barnes v. International Amateur Athletic Fed'n*, 862 F. Supp. 1537, 1545 (S.D.W.V. 1983).

44. See Arnold, *A Vocabulary*, *supra* note 24, at 70-76; see also AAA, *supra* note 20, at 11; Buckley, *supra* note 25, at 161.

45. See Arnold, *A Vocabulary*, *supra* note 24, at 64-91; see generally *infra* note 47 and accompanying text.

46. See James L. Branton & Jim D. Lovett, *Arbitration*, 10 TEXAS ALTERNATE DISPUTE RESOLUTION TRIAL LAWYERS SERIES, Chapter 2-3 and 2-15 (1996); see also AAA, *supra* note 20, at 11.

47. Arbitration awards might be overturned by a court if an arbitrator knew, but ignored, applicable law. See Frank E. A. Sander & Mark C. Fleming, *Arbitration of Employment Disputes under Federal Protective Statutes: How Safe Are Employee Rights?*, DISP. RESOL. MAG., Spring 1996, at 15 (citing *First Options v. Kaplan*, 514 U.S. 938 (1995)); see also *Labor Relations Div. of Constr. Indus. v. International Bd. of Teamsters*, 29 F.3d 742 (1st Cir. 1994) (holding that courts should defer to an arbitrator's determination unless the reasoning shows the arbitrator exceeded his authority by ignoring the underlying contract in dispute); *Baravati v. Josephthal, Lyon & Ross, Inc.*, 28 F.3d 704 (7th Cir. 1994) (holding the limited grounds upon which

be crafted so that it will cover most disputes. Under a well-crafted clause, arbitration can only be avoided if an immediate injunction is needed, if the dispute falls outside the four corners of the contract, or if a party can waive arbitration by filing a lawsuit.<sup>48</sup>

Similar to mediation, arbitration is typically less time-consuming, less formal, less expensive, and more private than litigation.<sup>49</sup> These factors are all critical in the image-conscious sports industry, which traditionally faces a significant amount of media and public scrutiny. To help diffuse potential scrutiny, parties to an arbitration can choose an arbitrator who is experienced in the sports industry, who is sensitive to key sports concerns, and who can effectively understand the dispute's nuances.<sup>50</sup>

Arbitration procedures are widely used to resolve professional sports disputes and are probably the most important component of professional sports' collective bargaining agreements (CBA).<sup>51</sup> Arbitration and sports have a long-established tradition.<sup>52</sup> Major League Baseball's CBA demonstrates arbitration's effectiveness in resolving various sports disputes.<sup>53</sup> Baseball's arbitration clause is purposely written in broad terms to cover most potential disputes.<sup>54</sup> At the same time, the CBA provides for a "last best offer" process where the arbitrator is required to pick the last offer made by either party.<sup>55</sup> Arbitration procedures

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arbitration awards can be set aside include the arbitrator's exceeding his authority or his manifest disregard of the law, but not the mere award of punitive damages).

48. See Branton, *supra* note 46 at 2-9, 2-10.

49. See *id.* at 2-6 and 2-31; see also AAA, *supra* note 20, at 10.

50. See Branton, *supra* note 46 at 2-9-10.

51. See AAA, *supra* note 20, at 7-8.

52. In fact, "baseball" and "night baseball" arbitration are specific names given to arbitration procedures that mirror arbitration procedures used to resolve baseball labor arbitration disputes. See Arnold, *A Vocabulary*, *supra* note 24, at 78-79. Baseball arbitration revolves around each party submitting a written settlement proposal after the arbitration is conducted and the arbitrator choosing one proposal, without any room to craft his/her own decision. See *id.* at 78. Night baseball arbitration involves a similar process. The arbitrator drafts a proposed settlement, prior to seeing the parties' proposals, then selects the party-offer closest to the arbitrator's proposal. See *id.* at 79.

53. See, e.g., National & Am. League Prof'l Baseball Clubs v. Major League Baseball Players Ass'n, 66 Labor Arbitration 101 (1976) (Messersmith and McNally Grievances). Legislation was introduced in 1995 to repeal baseball's antitrust exemption and to require the parties to submit all disputes to binding arbitration. See Murray Chass, *Lawmakers Pursue 'Contract With Fans'*, N.Y. TIMES, Jan. 5, 1995, at B13.

54. See Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n, 532 F.2d 615 (8th Cir. 1976).

55. See Jeffrey A. Rosenthal, *The Amateur Sports Draft: The Best Means to the End?*, 6 MARQ. SPORTS L.J. 1, 21 (1995); see also AAA, *supra* note 20, at 8.

force parties to move closer to resolution and take more conservative bargaining positions to avoid forcing the arbitrator to rule in favor of the other party. This often results in parties reaching good-faith settlements.<sup>56</sup> The dispute-resolution process promoted by baseball's arbitration system has resulted in fewer cases being resolved through arbitration and more cases being settled by the parties.<sup>57</sup> Currently, arbitration is present in all major professional sport leagues.<sup>58</sup>

Historically, courts have been reluctant to intervene in amateur sports organization disputes, thereby requiring athletes to exhaust internal procedures prior to seeking judicial relief.<sup>59</sup> The requirement to finally resolve all disputes through existing ADR mechanisms prior to utilizing the judicial process can resolve various sports-oriented disputes in a more effective manner.<sup>60</sup> In 1978, the Amateur Sports Act specifically required the United States Olympic Committee (USOC) to develop provisions for quickly adjudicating disputes, which led to the naming of the American Arbitration Association as the arbiter of specified disputes.<sup>61</sup>

Additionally, amateur sports organizations have successfully developed additional venues for resolving international and Olympic disputes.<sup>62</sup> For instance, in the 1996 Olympic Games, all athletes were required to sign a contract requiring the submission of all disputes to arbitration.<sup>63</sup> Consequently, no disputes

56. See AAA, *supra* note 20, at 8.

57. See Hal Bodley, 1997 Baseball Arbitration, USA TODAY, Feb. 21, 1997, at C11. In 1996, only five salary disputes were arbitrated, while 43 additional disputes filed for arbitration were settled prior to arbitration. See *id.* Since 1974, there have been 398 salary arbitrations in baseball. See *id.*

Hockey, on the other hand, allows the arbitrator to choose one party's offer or to craft their own final award, which reduces the incentive for parties to settle their dispute. See PAUL C. WEILER & GARY R. ROBERT, CASES, MATERIALS AND PROBLEMS ON SPORTS AND THE LAW 113 (Supp. 1995).

58. See AAA, *supra* note 20, at 7-8.

59. See, e.g., *Defrantz v. United States Olympic Comm.*, 492 F. Supp. 1181 (D.D.C. 1980).

60. The primary focus of AAA arbitration revolves around athlete eligibility, determination of a sport's appropriate national governing body, and resolving drug test results. See AAA, *supra* note 20, at 4.

61. See *id.* at 4-5 (citing Amateur Sports Act of 1978, 36 U.S.C. § 383 (1994)).

62. See generally Pilgrim, *supra* note 20; see also Anthony T. Polvino, *Arbitration as Preventative Medicine for Olympic Ailments: The International Olympic Committee's Court of Arbitration for Sport and the Future for the Settlement of International Sporting Disputes*, 8 EMORY INT'L L. REV. 347 (1994).

63. See Pilgrim, *supra* note 20, at 22; see also Lolita Browning, *Olympics '96: Is There an Arbitrator in the House?*, TEX. LAW., July 22, 1996, at 6; Richard C. Reuben,



were filed with U.S. courts and six issues were adjudicated by arbitrators during the games.<sup>64</sup> Thus, as demonstrated in the Olympics, arbitration and effective dispute resolution is ideally suited for youth and collegiate athletics.

### C. Med-arb

While arbitration is the primary tool utilized for resolving professional sports and Olympic disputes, a mediation-arbitration blend represents an additional option.<sup>65</sup> Mediation-arbitration or "med-arb" is a process utilizing mediation to resolve a dispute, which can then proceed to arbitration.<sup>66</sup> Med-arb is the perfect ADR blend for complex disputes including multiple issues, because those issues not resolved in mediation can then be resolved through arbitration instead.<sup>67</sup>

In med-arb, the mediator can also serve as the arbitrator,<sup>68</sup> although this presents a serious drawback: if a party knows the mediator/arbitrator might also arbitrate the dispute, the party might avoid raising relevant, confidential information for fear that the future mediator/arbitrator would utilize that information and return an undesirable decision. This concern can chill the communication process in mediation and force arbitration.

Med-arb is not just a theory; it has already been utilized in the professional sports environment. In a dispute between professional football agents and players, the National Football League Players' Association required the med-arb process if mediation alone failed.<sup>69</sup>

Various ADR techniques can be, and are currently used to resolve Olympic and professional sports disputes. The ADR techniques addressed above can be applied to youth and collegiate sports disputes by requiring ADR as the exclusive option for deciding disputed issues.

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*And the Winner Is . . . Arbitrators To Resolve Disputes as they Arise at Olympics*, A.B.A. J., Apr. 1996, at 20.

64. See Pilgrim, *supra* note 20, at 23.

65. See AAA, *supra* note 20, at 4 (citing Amateur Sports Act of 1978, 36 U.S.C. § 383 (1994)).

66. See Arnold, *A Vocabulary*, *supra* note 24, at 63; see also AAA, *supra* note 20, at 11.

67. See AAA, *supra* note 20, at 11.

68. See *id.*

69. See Note, *The NFLPA's Arbitration Procedure: A Forum for Professional Football Players and Their Agents to Resolve Disputes*, 6 J. ON DISP. RESOL. 107, 112 (1990).



### III. WORKING ADR INTO ATHLETIC DISPUTES

#### A. *Contractual Underpinnings for ADR*

Contractual relationships can take many forms, but no matter what the form, contracts are the mechanism for moving disputing parties toward ADR. By requiring disputing parties to avail themselves of the ADR process, universities and youth athletic associations can focus on providing athletic opportunities rather than putting out fires in their programs. A contractual relationship establishing employment terms typically exists between universities and their athletic coaches and administrators. Through these contracts, universities can, if the parties are willing, require coaches and administrators to pursue ADR prior to seeking court intervention.

However, while coaches and administrators can be contractually bound to pursue ADR, students typically do not have the same contractual relationship with universities. While some student-athletes have alleged an employment relationship, courts have been unwilling to find employment relationships absent some specific employment compensation beyond a student-athlete's scholarship.<sup>70</sup> Even though student-athletes are

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70. See generally *Graczyk v. Workers' Comp. Appeals Bd.*, 229 Cal. Rptr. 494 (Ct. App. 1986) (holding that a collegiate athlete with a contractual scholarship is not an "employee" entitled to Workmen's Compensation Act benefits); *Van Horn v. Industrial Accident Comm'n*, 33 Cal. Rptr. 169 (Ct. App. 1963) (holding that a football player on an athletic scholarship "rendered service" as defined within the Workmen's Compensation Act and was entitled to benefits; however, in response to this case, the legislature amended section 3352 of the Act, adding athletes to the excluded groups under the definition of "employees"); *State Comp. Ins. Fund v. Industrial Comm'n*, 314 P.2d 288 (Colo. 1957) (holding that there was no workers' compensation coverage because the student's football participation was not contingent on his part-time university provided job); *University of Denver v. Nemeth*, 257 P.2d 423 (Colo. 1953) (holding that the student was both a maintenance worker and football player and thus was covered by workers' compensation); *Rensing v. Indiana State Univ. Bd. of Trustees*, 444 N.E.2d 1170 (Ind. 1983) (holding that worker compensation coverage was not available due to the fact there was no employer-employee relationship between a university and an athlete based solely on the latter's acquisition of an athletic scholarship); *Coleman v. Western Mich. Univ.*, 336 N.W.2d 224 (Mich. Ct. App. 1983) (holding that an athlete is not an "employee" of the university within the meaning of Worker's Disability Compensation Act since the work performed was not "integral employment" for the university); Keith A. Haskins, Comment, *Pay for Play: Should Scholarship Athletes Be Included Within State Worker's Compensation Systems?*, 12 LOY. L.A. ENT. L.J. 441 (1992); Mark R. Whitmore, Note, *Denying Scholarship Athletes Worker's Compensation: Do Courts Punt Away a Statutory Right?*, 76 IOWA L. REV. 763 (1991).

not employees, other contracts such as letters of intent, scholarship agreements, and student codes of conduct<sup>71</sup> can provide the mechanism to require using ADR to resolve disputes.

### 1. *The National Letter of Intent*

The National Letter of Intent is the official document issued by the Collegiate Commissioners Association and utilized by subscribing NCAA-member institutions to establish the commitment of a prospective student-athlete to attend a particular institution.<sup>72</sup> This commitment has been described as a contractual commitment.<sup>73</sup> For example, if a prospective student-athlete wants to change schools after signing day, he or she must participate in at least one practice in their sport or attend at least one class at their initially selected institution.<sup>74</sup> The institution and the student-athlete have committed to each other, and if the student-athlete changes his or her mind, there is a consequence akin to a liquidated damages provision.<sup>75</sup> Such athletes must sit out a year in their sport prior to enrolling at another institution and must also complete a full-time academic program for a full year at the new institution before competing in their sport again.<sup>76</sup> Although letters of intent establish the initial contract between an institution and a student-athlete, other contracts are developed after the letter of intent is executed.

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71. Student codes of conduct are similar to youth sports rules and regulations for participation as they both set forth requirements for continued participation and eligibility. Therefore, all references to "codes" refers to rules and regulations affecting youth through collegiate athletes.

72. See NATIONAL COLLEGIATE ATHLETIC ASS'N, 1996-97 NCAA MANUAL, Bylaws 13.02.9, 13.10.1.2 (1996) [hereinafter NCAA MANUAL].

73. See Sean Alan Roberts, Comment, *College Athletes, Universities, and Workers' Compensation: Placing the Relationship in the Proper Context by Recognizing Scholarship Athletes as Employees*, 37 S. TEX. L. REV. 1315, 1339 (1996); see also *Fortay v. University of Miami*, No. CV-93-3443, 1994 WL 62319, at \*14 n.9 (D.N.J. Feb. 17, 1994); ROBERT C. BERRY & GLENN M. WONG, 2 LAW AND BUSINESS OF THE SPORTS INDUSTRIES 145-52 (2d ed. 1993); Michael J. Cozzillio, *The Athletic Scholarship and the College National Letter of Intent: A Contract by Any Other Name*, 35 WAYNE L. REV. 1275, 1290 (1989).

74. See NCAA MANUAL, *supra* note 72, at 14.5.1. to 14.5.2.

75. Liquidated damages are defined as an amount stipulated in the contract which the parties agree is a reasonable estimation of the damages owing to one in the event of a breach by the other. See BARRON'S LAW DICTIONARY 274 (2d ed. 1984).

76. See NCAA MANUAL, *supra* note 72, at 14.5.1.2 to 14.5.2.

## 2. *Scholarship agreements*

A contractual relationship is also created when an athlete accepts an athletic scholarship.<sup>77</sup> In *Taylor v. Wake Forest University*,<sup>78</sup> a football player lost his scholarship because he was not complying with his contractual obligations to maintain academic eligibility and compete in intercollegiate athletics.<sup>79</sup> The court concluded that when he refused to compete, absent any injury or acceptable excuse, he breached his contractual obligations.<sup>80</sup> In addition to breaching the scholarship contract by not participating for academic reasons, an athlete could breach the scholarship contract by refusing to participate in certain activities, even if such refusal is based upon the exercise of first amendment rights.<sup>81</sup>

The athlete is not the only party that can violate the scholarship contract. Athletes are now seeking judicial redress for various promises made by coaches during the athletic recruiting process. In *Ross v. Creighton University*,<sup>82</sup> a disgruntled student-athlete alleged educational malpractice and breach of contract.<sup>83</sup> The educational malpractice claim did not pass judicial scrutiny, but the breach of contract claim did and eventually led the university to settle the matter out of court.<sup>84</sup> The Ross court con-

77. See *Van Horn v. Industrial Accident Comm'n*, 33 Cal. Rptr. 169 (Ct. App. 1963); see also Ray Yasser, *Are Scholarship Athletes at Big-Time Programs Really University Employees?—You Bet They Are!*, 9 BLACK L.J. 65, 70 (1984); Robert C. Rafferty, Note, *Rensing v. Indiana State University Board of Trustees: The Status of the College Scholarship Athlete—Employee or Student?*, 13 CAP. U. L. REV. 87, 92 (1983).

78. 191 S.E.2d 379 (N.C. Ct. App. 1972).

79. See *id.* at 381.

80. See *id.* at 382. The Taylor court concluded that devoting more time to studying is not a reasonable excuse to violate the scholarship agreement. See *id.* The court in *Barile v. University of Virginia*, stated that the contractual relationship between a student and a college is "particularly applicable to college athletes who contract by financial aid or scholarship agreement to attend college and participate in intercollegiate athletics." 441 N.E.2d 608, 615 (Ohio Ct. App. 1981). See also *Begley v. Corporation of Mercer Univ.*, 367 F. Supp. 908 (E.D. Tenn. 1973) (holding an athlete's inability to comply with contractual provisions regarding adherence to NCAA grade regulations upon accepting an athletic scholarship released the university's performance obligations under that contract).

81. See generally *Williams v. Eaton*, 310 F. Supp. 1342 (D. Wyo. 1970) (holding athletes' protests in violation of scholarship contract provisions analogous to the situation where violations of federal and state laws permit the university and its officials to suspend their contractual duties).

82. 957 F.2d 410 (7th Cir. 1992).

83. See *id.* at 414-15.

84. See Gil Fried, *Intercollegiate Athletics Fumbling into the Court Room*,



cluded that the student-athlete could rely upon representations made by a coach that educational assistance would be provided, and failure to provide such assistance could constitute a contractual breach.<sup>85</sup>

### 3. *Student codes of conduct*

A student code of conduct is another contract that sets forth the duties and obligations of a university and its students. Students accept these rules and regulations as a condition of attending the university. The codes set out rules of conduct between students, but could also be used to establish certain student rights.

In *Marcum v. Dahl*,<sup>86</sup> some student-athletes spoke against their coach and consequently lost their scholarships. The athletes brought their grievance to the university's athletic director in January 1978 and were told that the problem would be considered and no grudges would be held.<sup>87</sup> After waiting two months, the athletes told the press that if the coach was rehired they would not play the following year.<sup>88</sup> The court determined that the athletes' comments were not constitutionally protected speech because the comments were not on a matter of public concern.<sup>89</sup> The court also concluded that the matter was an internal problem and the athletes should have pursued their grievance through official channels.<sup>90</sup> The athletes were offered the opportunity to have the matter heard by a university tribunal, but the athletes refused. The student code of conduct allowed the tribunal, and/or the university, to dismiss anyone that engaged in disruptive behavior. Because the comments resulted in disharmony among the players and disrupted the effective administration of the basketball program, the athletes' scholarships were not renewed.<sup>91</sup>

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ATHLETIC ADMIN., Aug. 1992, at 18, 20.

85. See *Ross*, 957 F.2d at 417.

86. 658 F.2d 731 (10th Cir. 1981).

87. See *id.* at 733.

88. See *id.*

89. See *id.* at 734.

90. See *id.*

91. See *id.* In order to help entrench a university's right to discipline students, the Ohio legislature passed § 3345.21 of the Ohio Revised Code, which allows a university to adopt rules necessary to prevent disruption of the educational function of the college or the university.



Violations of the student code of conduct could be heard in several different university forums. Most student codes establish various adjudicating bodies to hear cases. These adjudicative bodies could include informal disciplinary conferences for less severe violations as well as conference boards, resident boards, a central board, ad hoc boards, and possibly a senate committee on student conduct.<sup>92</sup> Universities could utilize a formal mechanism of control such as hearing officers, judicial boards, and student conduct committees, or the universities could use informal mechanisms of control such as peer advisement, staff advisement, and mediation.<sup>93</sup> With differing reviewing boards and jurisdictional options, students might be more confident in the proceedings' fairness, since the students would be judged in part by their peers. However, this might not always be the case. While students sometimes serve on boards and panels, the final authority in disciplinary matters is traditionally vested in university administrators and the Board of Regents.<sup>94</sup>

Some codes have specific provisions that establish internal university tribunals.<sup>95</sup> These tribunals have recently received criticism due to several cases that generated significant media attention highlighting the flaws that can be associated with such internal tribunals.<sup>96</sup> One key case in 1996 set the tone for national outrage against some university tribunals that have been perceived to protect athletes accused of heinous criminal acts.<sup>97</sup> Christy Brzonkala was a freshman student-athlete at Virginia Polytechnic Institute and State University (VPI) when she claimed to have been raped by two VPI football team members.<sup>98</sup>

92. See Gary Pavela, *Limiting the "Pursuit of Perfect Justice" on Campus: A Proposed Code of Student Conduct*, 6 J.C. & U.L. 137, 141, 145 (1979-80); see also Walter Saurack, Note, *Protecting the Student: A Critique of the Procedural Protection Afforded to American and English Students in University Disciplinary Hearings*, 21 J.C. & U.L. 785 (Spring 1995).

93. See Donna Bialik et al., *Higher Education: Fertile Ground for ADR*, DISP. RESOL. J., March 1994, at 61; Lawrence D. Mankin, *The Role of the Ombudsman in Higher Education*, DISP. RESOL. J., Oct. 1996, at 46.

94. See Pavela, *supra* note 92, at 141.

95. See VIRGINIA POLYTECHNIC INST. AND STATE UNIV., UNIVERSITY POLICIES FOR STUDENT LIFE 1994-1995 (1994) [hereinafter UNIVERSITY POLICIES].

96. See John Ritter, *When Schools Act as Courts*, USA TODAY, Feb. 26, 1997, at A3.

97. See *Brzonkala v. Virginia Polytechnic and State Univ.*, Civil Action No. 95-1358-R (W.D. Va. May 7, 1996) (mem.). See generally Nina Bernstein, *Virginia Tech Wins Dismissal of a Rape Suit*, N.Y. TIMES, May 8, 1996, at A16; Tony Mauro, *Judge Throws Out Historic Rape Lawsuit*, USA TODAY, July 30, 1996, at A1.

98. See *Brzonkala*, Civil Action No. 95-1358-R at 2.

Brzonkala filed a request for a student discipline hearing pursuant to VPI's student life policies.<sup>99</sup> One reason Brzonkala selected VPI's judicial system to prosecute her alleged assailants was the system's stated goal of creating a "fair and just environment in which student members of the University community can grow and learn."<sup>100</sup>

A university hearing was held and charges were brought against the football players under the abusive-conduct policy.<sup>101</sup> Sexual abuse, which includes rape, is classified in the VPI student code of conduct as a violation of the university's abusive-conduct policy.<sup>102</sup> Students who violate the abusive-conduct policy can face suspension or dismissal from VPI.<sup>103</sup> One assailant, Morrison, admitted at the hearing that he had sexual contact with Brzonkala even though she refused his advances.<sup>104</sup> VPI's judicial committee found Morrison guilty of sexual assault and imposed a two-semester suspension.<sup>105</sup>

Morrison appealed the committee's sanction, and the university judicial committee's guilty verdict was upheld.<sup>106</sup> However, after Morrison threatened to sue the university, VPI officials contacted Brzonkala to request an additional hearing even though the "Appeal Officer's decision is final."<sup>107</sup> During the second hearing, Brzonkala's counsel was denied access to copies of the tape from the prior hearing based on the university's claim that the tape was part of Morrison's educational records and thus could not be disclosed to Brzonkala.<sup>108</sup> Nonetheless, the

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99. *See id.* *See generally* UNIVERSITY POLICIES, *supra* note 95.

100. OFFICE OF THE DEAN OF STUDENTS, A PRACTICAL GUIDE TO THE VIRGINIA TECH JUDICIAL SYSTEM 3 (1993) [hereinafter PRACTICAL GUIDE]. The purpose of the Judicial System is further reiterated in its two objectives: "First, its objective is to determine the facts surrounding an incident and make fair decisions on the question of innocence or guilt. Second, through its sanctions, it attempts to modify those behaviors deemed unacceptable by the University." *Id.*

101. *See Brzonkala*, Civil Action No. 95-1358-R at 3.

102. *See* UNIVERSITY POLICIES, *supra* note 95, at 26.

103. *See id.*

104. *See Brzonkala*, Civil Action No. 95-1358-R at 3.

105. *See id.*

106. *See id.*

107. *Id.* at 4 (quoting PRACTICAL GUIDE, *supra* note 100, at 6). VPI officials claimed the second hearing was a mere technicality to correct the school's error in bringing the complaint under the new Sexual Assault Policy. *See id.*

108. *See id.* The records were protected pursuant to the Family Education Right to Privacy Act, 20 U.S.C. §1232g (1994) (FERPA). Brzonkala had to hire her own counsel to represent her at the hearing and she was unable to acquire sworn affidavits from her witnesses because they were unavailable due to summer vacation. *See id.*

judicial committee again found Morrison guilty of abusive conduct and reimposed the two-year suspension.<sup>109</sup> Morrison again appealed the decision, without notice to Brzonkala, and VPI set aside the sanctions against Morrison.<sup>110</sup>

The Brzonkala incident could have been effectively resolved through ADR instead of wasting university resources through several adjudications, which ultimately led all the parties to court. Using ADR would have provided a more neutral environment with no external pressure from other parties, as well as a quick and final resolution.

### *B. Recommendations for Incorporating Arbitration Clauses in Student-Athlete Contracts*

No matter what contractual mechanism is utilized, a contract including an ADR clause is only the first step in the ADR process. Once a party is contractually obligated to utilize ADR, effective ADR policies and options must be developed and communicated to the relevant parties.

In order to ensure effective ADR for athletic disputes, the following language represents a proposed clause by which ADR could be included in athletic contracts or student codes:

As the student-athletes and athletic department personnel of this university, we represent the university to the general public. Therefore, whenever a dispute arises regarding the violation of a student-athlete's personal rights by a university employee or representative, that student-athlete shall attempt to resolve the dispute through ADR prior to pursuing any other recourse.

This language creates and defines a contractual relationship that would ensure ADR for all appropriate matters. The use of the term "shall" requires that both the student-athlete and the university give a good-faith effort to resolve the dispute through ADR. To ensure compliance by all coaches or administrators, the

109. *See id.* at 5.

110. *See id.* Morrison was found guilty of a reduced charge of "using abusive language" and was required to attend a one-hour educational session. *See id.*; *see also Ex-Student to Appeal Dismissal of Suit For Rape by VA Tech Football Players*, WOMEN IN HIGHER EDUC., June 1996, at 4. The University Provost reduced the punishment to a one-hour session because, "the penalty was too harsh for the violation." *The Open Campus Police Act, 1995: Hearing on H.R. 2416 Before the Committee on Economic and Educational Opportunity*, 104th Cong. (1996) (statement of Kenneth Brzonkala).



university could include a clause in their employment contracts requiring compliance with the rules and terms of the contracts between the university and the student.

The ADR clause could also be developed from the current contractual provisions used in the labor industry. These ADR clauses state: "If a dispute arises out of or related to this contract, or the breach thereof, and if said dispute cannot be settled through negotiations, the parties agree first to try in good faith to settle the dispute through mediation."<sup>111</sup> In addition to modifying the necessary contracts to encourage ADR, the student codes themselves can be changed to allow ADR as an option. ADR should be the first step in the internal review process prior to university adjudication or subsequent court adjudication. Some programs utilize a multi-tier system—incorporating peer mediation, mediation, nonbinding arbitration, then university adjudication.

The key to any effective ADR clause within a contract is to word the clause generally to avoid leaving out any potential claims, yet specific enough to address individual concerns. Thus, an ideal clause would broadly define ADR's reach, but specifically limit damages to certain categories.<sup>112</sup> All contract clauses establishing ADR's use should specifically describe all disputes that will be covered, such as eligibility, scholarship, team discipline, and related student-athlete concerns. Furthermore, the clauses should specify what penalties or resolution steps can be imposed by the arbitrator(s).

The code or contract could also require privacy and confidentiality in all ADR sessions.<sup>113</sup> Confidentiality regarding information discussed during ADR could be protected by a clause providing: "The parties shall maintain the confidentiality of the mediation and shall not rely on or introduce as evidence in any arbitral, judicial, or other proceeding: views expressed, admissions made or proposals offered."<sup>114</sup>

Additionally, neutrality must be guaranteed for ADR to be effective.<sup>115</sup> Athletes are often concerned about neutrality be-

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111. SOURCEBOOK, *supra* note 33, at 684.

112. See *Pony Express Courier Corp. v. Morris*, No. 04-95-00487-CV (Apr. 17, 1996), cited in *TEX. LAW.*, Apr. 29, 1996, at 15.

113. SOURCEBOOK, *supra* note 33, at 685.

114. *Id.*

115. Arbitrators and mediators are required to be neutral or risk the prospect of their decisions being overturned due to a conflict of interest. See generally *AMERICAN*



cause of the potential that a university judge or administrator would impose an unjust, retaliatory resolution. Athletes are constantly aware that institutional retaliation could have a detrimental impact on their future athletic opportunities. As sports sociologist J. Scott observed,

"[T]he athlete lives in a world where one misplaced word or action often threatens the immediate end of his athletic career. From Little League baseball through professional football, the correct attitude is as important as actual athletic skill, and once an athlete is labeled a troublemaker or uncoachable, his athletic career is usually doomed. For many years athletes perceived themselves as being in a powerless position within the sports world, and like most powerless groups, they survived by deferring to authorities—coaches, athletic directors, and professional team owners."<sup>116</sup>

Neutrality is especially critical when disputes are marshaled through university judicial systems. Often, universities provide an ombudsman or attorney to benefit the students and assist them in specific matters. However, these individuals have a difficult role to play as they must simultaneously protect students and maintain their obligation to the university.<sup>117</sup> Neutrality can be better maintained by marshaling student fees in order to hire an attorney who then has an independent duty to the students, not the university, and is thus in a position to provide unbiased advice and assistance in dispute resolution.<sup>118</sup> Neutrality must also be maintained by coaches to avoid interference with the university internal adjudicative process. After suffering a significant public relations nightmare with several student-athletes, Arizona State University developed an advisory panel of professionals and student-affairs administrators to oversee sanctions and appeals in hopes of reducing the influence coaches might have in the process.<sup>119</sup>

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ARBITRATION ASSOCIATION, A GUIDE FOR SECURITIES ARBITRATORS 6 (1993).

116. Robert L. McGahey, Jr., *A Comment on the First Amendment and The Scholar-Athlete*, 6 HUM. RTS. 155, 157 (1977) (quoting J. SCOTT, *THE ATHLETIC REVOLUTION* 209-10 (1971)).

117. See Jeffrey A. Newman, *Conflict of Interest: University Employees Advising Student Crime Victims*, CAMPUS WATCH, Fall-Winter 1995, at 8.

118. See *id.* at 9.

119. See Debra E. Blum, *Criminal Conduct by Some of Its Athletes Leaves Arizona State U. Wondering What's Gone Wrong*, CHRON. OF HIGHER EDUC., Nov. 18, 1992, at A29.

Even if there is no contractual relationship between the student-athlete and the university, ADR can still assist in resolving various athletic disputes. The Community Relations Service (CRS) of the United States Department of Justice was created by the Civil Rights Act of 1964 (Title VI), which prohibits discrimination in federally assisted programs.<sup>120</sup> The CRS helps resolve local conflicts with racial overtones which could split communities<sup>121</sup> and was even utilized in 1993 to resolve a dispute between the Black Coaches Association and the NCAA over minority participation and employment opportunities in intercollegiate athletics.<sup>122</sup>

The CRS is required to "provide assistance to communities and persons . . . in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities . . . or which affect or may affect interstate commerce . . . [when] peaceful relations among the citizens of the community involved are threatened . . . ."<sup>123</sup> Through mediation, the CRS has been able to manage many conflicts including racial harassment disputes and school desegregation disputes.<sup>124</sup> The

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120. See 42 U.S.C.A. § 2000g (Historical Note) (West 1994).

121. See William A. Newman, 17 OHIO N.U. L. REV. 121, 124-125 (1990).

122. See, e.g., *BCA Delays Boycott Action*, NCAA NEWS, Jan. 19, 1994, at 1; *Method for Addressing Issues Provided by NCAA-BCA Talks*, NCAA NEWS, Mar. 30, 1994, at 1; Steve Wieberg, *NCAA Move Doesn't Deter Black Coaches*, USA TODAY, Oct. 21, 1993, at 7C. An agreement was reached between the parties setting forth governing principles that provided the framework for future discussions and provided a mechanism for greater communication between the parties. See Debra E. Blum, *Black Coaches and NCAA Agree to Discuss Disputed Rules*, CHRON. OF HIGHER EDUC., Mar. 30, 1994, at A38.

123. 42 U.S.C.A. § 2000g-1 (West 1994). Disputes can be referred to the CRS for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance. See *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 265 (1964) (quoting § 204(d) of Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a-1 to -6 (1964)).

124. The CRS has also tried to resolve disputes regarding demonstrations and prison conflicts. The CRS tried to facilitate communications for a planned demonstration in the case of *United States v. Dellinger*, 472 F.2d 340 (7th Cir. 1972). In resolving a court case about prison conditions, the court used the CRS which had previous experience mediating inmate grievances. See *Frazier v. Donelon*, 381 F. Supp. 911, 914 (E.D. La. 1974). The negotiation meetings were "highly productive." *Id.* at 915. "In a remarkably short time, a certain camaraderie between the two factions surfaced and soon thereafter concrete compromises were perfected on a plurality of the issues that were in dispute." *Id.* The court concluded that besides the matters resolved through the binding agreement reached in the negotiations, certain fringe benefits resulted from the negotiations including, "a higher level of rapport between the authorities and the inmates, and, of no small import, the indoctrination of mediation

CRS represents a useful vehicle when no contract exists, or for older athletes who already have contracts and might not accept a new contract.

#### IV. CONCLUSION

There is no one correct solution for applying ADR to intercollegiate athletic settings; however, contracts and codes can help facilitate convenient access to ADR while maintaining good working relationships between the disputing parties. Without effective teamwork, it becomes almost impossible for teams to succeed on and off the field.

ADR is a successful tool for resolving disputes in professional and Olympic sports. There is no reason ADR cannot resolve disputes affecting intercollegiate and youth sports as well. The number and frequency of such disputes far exceeds the number and scope of disputes affecting professional and Olympic sports. By creating a comprehensive contractual scheme providing ADR as a primary option for dispute resolution, numerous disputes can be resolved outside the courthouse. In addition to developing the proper contractual framework, it is critical to secure a neutral organization or entity capable of mediating or arbitrating the disputes. University tribunals must undergo significant changes in order to become ADR-friendly to all parties without sacrificing neutrality.

If these changes are made and the principles discussed in this Article are applied at the university level, situations such as the UTEP boycott described in the introduction will be avoided. UTEP faced its racial concerns prior to ADR's growth. If the same factual scenario existed today, the players might have gone to court, where the court would have ordered arbitration. If UTEP contractually required its student-athletes to utilize arbitration, then the incident could have been finally determined without wasting valuable resources and time. UTEP would have avoided the negative publicity created by the boycott, and perhaps Bob Beamon could have led UTEP to a national championship.

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to both sides as a potentially viable and permanent alternative to the courts in resolving the complaints of inmates." *Id.*